

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DONALD J. TRUMP FOR PRESIDENT,
INC., REPUBLICAN NATIONAL
COMMITTEE, NEW JERSEY
REPUBLICAN STATE COMMITTEE,

Plaintiffs,

v.

TAHESHA WAY, in her official capacity
as Secretary of State of New Jersey,

Defendant.

No. 3:20-cv-10753-MAS-ZNQ

DECLARATION OF BRYAN WEIR

I, Bryan Weir, declare:

1. I am an attorney at the law firm Consovoy McCarthy PLLC, counsel for Plaintiffs in the above-captioned action. I am over the age of eighteen and I have personal knowledge of the following facts. If called as a witness, I could and would competently testify thereto.

A. Local Rule 65.1 Certification.

2. Expedited relief under Local Rule 65.1 is needed. Plaintiffs filed this action after Governor Murphy unilaterally changed New Jersey's election procedures via an Executive Order. Exec. Order No. 177 (Aug. 14, 2020), <https://bit.ly/30ZjBaj>. Among other things, that order provided that "every ballot without a postmark ... that is received by the county Boards of Elections from the United States Postal Service within forty-eight (48) hours of the closing of polls on November 3, 2020, shall be considered valid and shall be canvassed, assuming the ballot meets all other statutory requirements." *Id.* ¶14.

3. Plaintiffs filed this lawsuit on August 18 to challenge the Order on several grounds, including that the Governor is barred by the Elections and Electors Clauses of the U.S. Constitution from unilaterally changing New Jersey's election laws. *See* Doc. 1. Shortly after this lawsuit was

filed, the New Jersey Legislature moved toward codifying its substantive provisions, including the provision that mandates accepting unpostmarked ballots up to two days after Election Day.

4. The Legislature passed that law on or about August 28th and the Governor signed it shortly thereafter. *See* An Act Concerning the Establishment of Mail-in Ballot Drop Boxes Before Each Election and Vote-by-Mail Procedures for the November 2020 General Election, NJ LEGIS 72 (2020) (“A4475”).

5. Unexpectedly, and unlike the Governor’s Executive Order 177, A4475 contained a new provision that allows election officials to begin counting ballots 10 days before Election Day. A4475 §2(m). News reports recounted how this provision was quietly inserted in the bill just prior to voting. *See, e.g.,* R. Crespolini, *New provision could see vote counts leak before Election Day*, Mendham-Chester Patch (Sep. 3, 2020), <https://bit.ly/2FzvBaG> (“A provision to allow mail-in ballots to be opened and counted up to 10 days before the general election was quietly inserted by Democrats into A-4475, a measure concerning the placement of election drop boxes for delivering mail-in ballots. The legislation was amended, adopted, and signed into law in short order with no public mention of the provision's addition to the bill.”).

6. In light of the new legislation, Plaintiffs reevaluated their claims and filed an Amended Complaint on Friday, September 11. *See* Doc. 33. The new complaint removed the original first two counts related to the Governor’s authority under Electors and Elections Clause, and added a new count challenging the new provision permitting election officials to begin counting ballots 10 days before Election Day. *See* Doc. 33 ¶¶109-12. The accompanying motion challenges that new provision, as well as A4475’s requirement that election officials count unpostmarked ballots that are received within two days of Election Day.

7. Expedited relief is needed because the Election Day is on November 3, 2020, and election officials will begin counting ballots on October 24, 2020. In order to ensure that all parties

have the ability to seek appellate review (albeit on an expedited basis), Plaintiffs respectfully believe the parties need a ruling from this Court by October 5, 2020. But under the Court's standard rules for motions, the earliest hearing date would be at least 24 days from today, which means briefing would conclude after October 5. *See* L.R. 7.1(c)(1). Expedition is therefore necessary to allow the Court sufficient time to consider the parties' arguments and rule on Plaintiffs' motion in time for the parties to preserve the parties' ability to appeal.

B. Exhibit Authentication.

8. A true and accurate copy of David Chen, *Among Voters in New Jersey, GOP Sees Dead People*, N.Y. Times (Sept. 15, 2005), is attached hereto as Exhibit 1.

9. A true and accurate copy of Paul D'Ambrosio & Susanne Cervenka, *NJ Dead Are Registered Voters, But No Evidence of Fraud*, Asbury Park Press (Oct. 19, 2016), is attached hereto as Exhibit 2.

10. A true and correct copy of Katie Kausch, *Can Vote-by-mail Be Fixed for November Election? Election Officials Warn of Problems*, NJ.com (July 25, 2020), is attached hereto as Exhibit 3.

11. A true and correct copy of Kyle Morel, *1,666 uncounted Sussex County ballots from July primary just found in 'mislabeled' bin*, N.J. Herald (Sept. 14, 2020), is attached hereto as Exhibit 4.

12. A true and correct copy of David Wildstein *Reports of vote-by-mail ballots undelivered, tossed aside by postal workers*, N.J. Globe (April 25, 2020), is attached hereto as Exhibit 5.

13. A true and accurate copy of data compiled by the New Jersey government concerning the June 7, 2016 primary is attached hereto as Exhibit 6.

14. A true and correct copy of Joe Malinconico, *Councilman and Wife Arrested in Voter Fraud Case*, TAP into Paterson (Dec. 2, 2010), is attached hereto as Exhibit 7.

15. A true and correct copy of David Wildstein, *Patterson: The Rigo Rodriguez story*, N.J. Globe (June 26, 2020), is attached hereto as Exhibit 8.

16. A true and correct copy of the New Jersey Attorney General's September 28, 2012 Press Release concerning a voter fraud conviction, is attached hereto as Exhibit 9.

17. A true and correct copy of Corey McDonald, *Hoboken man pleads guilty to participating in 2015 vote-by-mail fraud scheme*, Hudson Cty. View (Oct. 8, 2019), is attached hereto as Exhibit 10.

18. A true and correct copy of John Heinis, *Feds: Hoboken woman pleads guilty to promoting vote-by-mail fraud scheme*, Hudson Cty. View (Nov. 8, 2018), is attached hereto as Exhibit 11.

19. A true and correct copy of Ron Zeitlinger, *Raia sentenced to 3 months in prison for Hoboken cash-for-votes scheme*, NJ.com (Dec. 2, 2019), is attached hereto as Exhibit 12.

20. A true and correct copy of Jerry DeMarco, *Elmwood Park Mayor Charged with Voter Fraud, Resigns*, Brook-Elmwood Daily Voice (Apr. 29, 2019), is attached hereto as Exhibit 13.

21. A true and accurate copy of Colleen O'Dea, *One in 10 Ballots Rejected in Last Month's Vote-by-Mail Elections*, NJ Spotlight (June 10, 2020), is attached hereto as Exhibit 14.

22. A true and accurate copy of David Wildstein, *Evidence of massive voter fraud in Paterson election, court records show*, New Jersey Globe (June 14, 2020), is attached hereto as Exhibit 15.

23. A true and accurate copy of J. Dienst and J. Valiquette, *Corruption Allegations Keep Growing in Paterson Vote-By-Mail Election*, NBC News N.Y. (May 13, 2020), is attached hereto as Exhibit 16.

24. A true and accurate copy of J. Dienst, *Paterson City Council Vice President Among 4 Charged With Voting Fraud in May Special Election: NJ AG*, NBC News N.Y. (June 25, 2020), is attached hereto as Exhibit 17.

25. A true and accurate copy of J. Dienst, *Judge Blocks Paterson Councilman-Elect Facing Voter Fraud Charges From Taking Office*, NBC News N.Y. (June 30, 2020), is attached hereto as Exhibit 18.

26. A true and accurate copy of J. Malinconico, *Bitter rivals agree to 'do-over' in disputed Paterson election*, Paterson Press (Aug. 11, 2020), is attached hereto as Exhibit 19.

27. A true and accurate copy of Michael T. Morley, *Election Emergency Redlines* (March 31, 2020), is attached hereto as Exhibit 20.

28. A true and accurate copy of The Pew Center on the States, *Inaccurate, Costly and Inefficient: Evidence that America's Voter Registration System Needs an Upgrade* (Feb. 2012), is attached hereto as Exhibit 21.

29. A true and accurate copy of Section 1-1.3 of the United States Postal Service Handbook PO-408, is attached hereto as Exhibit 22.

30. A true and accurate copy of the USPS Office of Inspector General's July 7, 2020 report *Management Alert: Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area*, is attached hereto as Exhibit 23.

31. A true and accurate copy of *An Autopsy of New York's Mail-Vote Mess*, Wall St. J. (Aug. 7, 2020), is attached hereto as Exhibit 24.

32. A true and accurate copy of the United States Postal Service's May 29, 2020 guidance concerning election mail is attached hereto as Exhibit 25.

33. A true and accurate copy of the United States Postal Service's January 25, 2020 guidance on First-Class Mail is attached hereto as Exhibit 26.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed September 16, 2020



Bryan Weir
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423